

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 04-3947

GEORGE P. STOE,
Appellant

v.

WILLIAM E. FLAHERTY; DAVID CARPENTER;
JAMES CARPENTER; WILLIAM SMELAS;
ROBERT SUNDERMAN; RONALD STATILE

On Appeal From the United States District Court
For the Western District of Pennsylvania
(D.C. Civil Action No. 04-cv-00489)
District Judge: Hon. Donetta W. Ambrose

Argued October 18, 2005
BEFORE: SMITH, STAPLETON and NYGAARD,
Circuit Judges

ORDER

IT IS ORDERED that the opinion of the Court entered
January 23, 2006, is hereby amended by deleting the last

sentence of Section III-C and substituting in lieu thereof a new paragraph to read as follows:

This argument has been waived.¹ But even were we to consider it, our conclusion would be the same. We do not read section 959(a) as creating federal jurisdiction that would exist independent of 28 U.S.C. § 1334. Accordingly, section 959(a) does not suggest that this state law action is anything other than “an action that could not have been commenced in a court of the United States absent jurisdiction under” 28 U.S.C. § 1334. 28 U.S.C. § 1334(c)(2).

By the Court

/s/ Walter K. Stapleton
United States Circuit Judge

DATED: March 17, 2006

¹Mandatory abstention applies only “[u]pon timely motion of a party” and does not implicate the Court’s subject matter jurisdiction. 28 U.S.C. § 1334(c)(2); *In re V&M Mgmt., Inc.*, 321 F.3d 6, 8 (1st Cir. 2003) (“[T]he abstention provision, which is waiveable by the parties, does not detract from the district court’s subject matter jurisdiction.”).